

**AGREEMENT AND PLAN OF REORGANIZATION**

**AMONG**

**AMERICA ONLINE, INC., a Delaware corporation,**

**AOL ACQUISITION CORP., a California corporation**

**AND**

**WIDE AREA INFORMATION SERVERS, INC.,  
a California corporation**

**April May \_\_, 1995**

# AGREEMENT AND PLAN OF REORGANIZATION

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**DRAFT: May 1, 1995**

## **AGREEMENT AND PLAN OF REORGANIZATION**

THIS AGREEMENT AND PLAN OF REORGANIZATION (the "Agreement") is entered into as of ~~April~~ **May** \_\_, 1995, by and among America Online, Inc., a Delaware corporation ("AOL"), AOL Acquisition Corp., a California corporation and wholly-owned subsidiary of AOL ("Sub"), and Wide Area Information Servers, Inc., a California corporation ("WAIS").

### **RECITALS**

A. The parties intend that, subject to the terms and conditions hereinafter set forth, Sub will merge with and into WAIS in a statutory merger or consolidation (the "Merger"), with WAIS to be the surviving corporation, pursuant to the terms and conditions set forth herein, and pursuant to an Agreement of Merger substantially in the form of Exhibit A (the "Agreement of Merger") and the applicable provisions of the laws of the State of California. Upon the Merger, all outstanding capital stock of WAIS will be converted into Common Stock of AOL, in the manner and on the basis determined herein and as provided in the Agreement of Merger.

B. The Merger is intended to be treated as (i) a tax-free reorganization pursuant to the provisions of Section 368(a)(1)(A) of the Internal Revenue Code of 1986, as amended (the "Code"), by virtue of the provisions of Section 368 (a)(2)(E) of the Code and (ii) a "pooling of interests" for accounting purposes.

NOW, THEREFORE, the parties hereto hereby agree as follows:

### **1. PLAN OF REORGANIZATION**

1.1 The Merger. The Agreement of Merger will be filed with the Secretary of State of the State of California as soon as practicable after WAIS Shareholder approval is obtained as described in Section 4.4 hereof. The effective time of the Merger as specified in the Agreement of Merger (the "Effective Time") is expected to occur on ~~April~~ **May** \_\_, 1995. Subject to the terms and conditions of this Agreement, Sub will be merged with and into WAIS in a statutory merger or consolidation pursuant to the Agreement of Merger and in accordance with applicable provisions of California law as follows:

1.1.1 Conversion of Shares. Unless there is an adjustment to the shares to be issued in the Merger pursuant to Section 1.1.4 below, each share of WAIS Common Stock ("WAIS Common Stock" or "WAIS Stock"), that is issued and outstanding immediately prior to the Effective Time and that does not dissent pursuant to Section 1.1.5 hereof, will, by virtue of the Merger and at the Effective Time, and without further action on the part of any holder thereof, be converted into such number of fully paid and

nonassessable shares of AOL Common Stock, \$0.01 par value per share ("AOL Common Stock") as shall be determined under the following formulas:

(a) Price Greater than \$75 \$37.50 per Share. If the AOL Closing Price (as hereinafter defined) is greater than or equal to \$75 \$37.50 per share immediately prior to the Effective Time, then the following formula shall apply:

$$AS = \frac{WS}{WS + WO} \times \underline{340,000} \text{ shares}$$

(b) Price Less than \$75 \$37.50 per Share. If the AOL Closing Price is less than \$75 \$37.50 per share immediately prior to the Effective Time, then the following formula shall apply:

$$AS = \frac{WS}{WS + WO} \times \underline{400,000} \text{ shares}$$

(c) Conversion Ratio. In each case, a number of shares of AOL Common Stock equal to the quotient of AS divided by WS (the "Conversion Ratio") will be issued for each outstanding share of WAIS Stock.

(d) Definitions. The following terms shall have the following meanings:

"AS": the total number of shares of AOL Common Stock to be issued as a result of the Merger.

"WS": the total number of shares of WAIS Common Stock outstanding immediately prior to the Effective Time.

"WO": the total number of shares of WAIS Common Stock issuable upon exercise of the options to purchase WAIS Common Stock set forth on Exhibit 1.1.1 (the "Current WAIS Options") that were outstanding *and exercisable* on March 31, 1995.

1.1.2 Assumption of Options. The Current WAIS Options that are outstanding (*whether or not exercisable*) immediately prior to the Effective Time will, by virtue of the Merger at the Effective Time and without further action on the part of any holder thereof, be assumed by AOL and converted into options to purchase that number of shares of AOL Common Stock ("AOL Options") as shall be determined by multiplying the number of shares of WAIS Stock issuable under such Current WAIS Options by the Conversion Ratio.

The exercise price per share of AOL Common Stock purchasable under each such AOL Option will be equal to the quotient of (i) the exercise price of the WAIS

Option (per share of WAIS Common Stock) divided by (ii) the Conversion Ratio. Continuous employment with WAIS will be credited to an optionee for the purposes of determining an optionee's vesting commencement date for AOL Options after the Merger. The term, exercisability, vesting schedule and all other terms of the AOL Options (including their status as Incentive Stock Options under Section 422 of the Internal Revenue Code of 1986, as amended) will remain otherwise the same as the corresponding Current WAIS Options from which they were converted. No vesting or exercisability of any Current WAIS Options will be accelerated solely as a result of the Merger. WAIS understands that any outstanding options to purchase WAIS Common Stock that are not Current WAIS Options will be canceled on the Closing Date.

1.1.3 AOL Closing Price. The "AOL Closing Price" shall be equal to the average of the closing prices per share of AOL Common Stock, as quoted on the Nasdaq National Market and as reported in the Wall Street Journal during the five trading days ending on the trading day preceding the Closing Date.

1.1.4 Adjustments for Capital Changes. If, prior to the Merger, AOL recapitalizes either through a split-up of its outstanding shares into a greater number, or through a combination of its outstanding shares into a lesser number, or reorganizes, reclassifies or otherwise changes its outstanding shares into the same or a different number of shares of other classes (other than through a split-up or combination of shares provided for in the previous clause), or declares a dividend on its outstanding shares payable in shares or securities convertible into shares, the number of shares of AOL Common Stock into which the shares of WAIS Stock are to be converted, and the number of shares of AOL Common Stock to be issued upon exercise of the AOL Options will be adjusted appropriately (as agreed to by AOL and WAIS if it involves something other than a mathematical adjustment) so as to maintain the proportional interests of the holders of WAIS Stock and Current WAIS Options in the outstanding AOL Common Stock. The formulas in Section 1.1.1 and 1.1.6 reflect a two-for-one stock split by AOL having a payment date of April 27, 1995.

1.1.5 Dissenting Shares. Holders of shares of WAIS Common Stock held by persons, if any, who have complied with all requirements for perfecting shareholders' rights of appraisal as set forth in Chapter 13 of the California General Corporation Law will be entitled to their rights under such Section Chapter with respect to such shares. (Any Dissenting Shares as to which such dissenters' rights are duly exercised are referred to hereinafter as "WAIS Dissenting Shares.") WAIS Stock as to which shareholders' rights of appraisal have not been perfected within 120 days after the Effective Date of the Merger will be converted into AOL Common Stock as required under Section 1.1.1 hereof.

1.1.6 Example. The following is an example of the determination of the exchange ratios for the WAIS Common Stock and Current WAIS Options based on WAIS's capitalization on the date hereof as set forth in Section 2.3 hereto and assuming an AOL Closing Price of \$75 \$37.50 or more per share of AOL Common Stock and Current WAIS Options for 1,908,000 shares of WAIS Stock, of which Current WAIS



Options for 591,375 shares are exercisable as of March 31, 1995. Given such assumptions, all 7,525,000 shares of outstanding WAIS Common Stock shall be exchanged for ~~157,613~~ 315,227 shares of AOL Common Stock (~~170,000~~ 340,000 shares multiplied by 0.92714), outstanding WAIS Current Options for 1,908,000 shares shall be exchanged for AOL Options to purchase ~~39,964~~ 79,927 shares of AOL Common Stock (1,908,000 shares multiplied by a Conversion Ratio equal to ~~0.0209452~~ 0.0418906), of which AOL Options for ~~12,387~~ 24,773 shares will be exercisable (i.e., vested) and ~~27,577~~ 55,154 shares will not yet be exercisable (i.e., unvested). This example has been provided by WAIS for informational purposes and is not intended to modify in any way the foregoing provisions of this Section.

1.2 Fractional Shares. No fractional shares of AOL Common Stock will be issued in connection with the Merger. In lieu thereof, the holders of WAIS Stock who would otherwise be entitled to receive a fraction of a share of AOL Common Stock, after aggregating all shares of AOL Common Stock to be received by such holder, will receive from AOL, promptly after the Effective Time, an amount of cash equal to the AOL Closing Price multiplied by the fraction of a share of AOL Common Stock to which such holder would otherwise be entitled. Holders of Current WAIS Options that would otherwise be converted into an AOL Option to purchase a fraction of a share of AOL Common Stock, after aggregating all AOL Options to be received by such holder that have the same exercise price per share, will receive from AOL, promptly at the time of any exercise of such AOL Options, an amount of cash equal to (i) the AOL Closing Price multiplied by the fraction of a share of AOL Common Stock to which such holder would otherwise be entitled upon exercise of the AOL Options, less (ii) the exercise price per share of the AOL Option multiplied by the fraction of the share of AOL Common Stock.

1.3 Escrow Agreement. Pursuant to an Escrow Agreement to be entered into on or before the Closing (as defined in Section 6.1 below) in substantially the form of Exhibit 1.3 (the "Escrow Agreement"), among AOL, WAIS, the Escrow Agent and the Representative, AOL will withhold, pro rata, from the shares of AOL Common Stock that would otherwise be delivered to WAIS shareholders, 10% of the shares of AOL Common Stock issued in the Merger. AOL will deposit in escrow pursuant to the Escrow Agreement certificates representing the shares thus withheld. The shares of AOL Common Stock represented by the certificates deposited in escrow (the "Escrow Shares") will be held as collateral for the indemnification obligations of the WAIS shareholders under Section 10.2 below and pursuant to the Escrow Agreement.

1.4 Effects of the Merger. At the Effective Time: (a) the separate existence of Sub will cease, and Sub will be merged with and into WAIS, and WAIS will be the surviving corporation, pursuant to the terms of the Agreement of Merger, (b) the Articles of Incorporation of WAIS, as amended in the Agreement of Merger, will become the Articles of Incorporation of the surviving corporation, (c) each share of Sub Common Stock outstanding immediately prior to the Effective Time will, at the Effective Time, be converted into one share of Common Stock of the surviving corporation, (d) the Board of Directors and officers of Sub will become the Board of Directors and officers of the

surviving corporation, and (e) the Merger will, from and after the Effective Time, have all of the effects provided by applicable law.

1.5 Further Assurances. The parties agree that if, at any time after the Effective Time, they or any of them consider or are advised that any further deeds, assignments or assurances are reasonably necessary or desirable to effectuate the Merger, at the request of AOL, they and any of their officers shall execute and deliver all such proper deeds, assignments and assurances and do all other things necessary or desirable to effectuate the Merger and otherwise to carry out the purpose of this Agreement.

1.6 Securities Law Compliance. AOL will issue the shares of AOL Common Stock in the Merger pursuant to the "private placement" exemption from registration under Section 4(2) of, and Rule 506 of Regulation D promulgated under, the Securities Act of 1933, as amended (the "Securities Act"), and the shares received by WAIS shareholders in the Merger will therefore be restricted securities within the meaning of Rule 144 thereunder.

1.7 Tax Free Reorganization. The parties intend to adopt this Agreement as a tax-free plan of reorganization and to consummate the Merger in accordance with the provisions of Section 368(a)(1)(A) of the Code by virtue of the provisions of Section 368(a)(2)(E). Accordingly, each of AOL, WAIS and Sub hereby represent that no action will be taken by such company or the management thereof, respectively, before or after the Merger that would prevent the Merger from qualifying as a tax-free reorganization under Section 368(a) of the Code. The AOL Common Stock issued in the Merger will be issued solely in exchange for the WAIS Stock, and the AOL Options issued in the Merger will be issued solely in exchange for the Current WAIS Options, each pursuant to this Agreement. No other transaction other than the Merger represents, provides for, or is intended to be, an adjustment to the consideration paid for the WAIS Common Stock and Current WAIS Options. AOL represents now, and as of the Closing Date, that except for cash paid in lieu of fractional shares or for WAIS Dissenting Shares, no consideration that could constitute "other property" within the meaning of Section 356 of the Code is being paid by AOL for the WAIS Stock in the Merger. In addition, AOL represents now, and as of the Closing Date, that it presently intends to continue Sub's and WAIS's historic business or use a significant portion of Sub's and WAIS's business assets in a business. AOL and Sub do not have a present intent following the Merger to cause WAIS to issue additional shares of its stock that would result in AOL losing control of WAIS within the meaning of Section 368(c) of the Code. AOL has no current plan or intention to liquidate WAIS, to merge WAIS with and into another corporation, to sell or otherwise dispose of the stock of WAIS, or to cause WAIS to sell or otherwise dispose of any of the assets of WAIS. At the Closing, officers of each of AOL, Sub and WAIS shall execute and deliver officers' certificates in the forms of Exhibits 1.7A and B. The provisions and representations contained or referred to in this Section 1.7 and Exhibits 1.7A and 1.7B shall survive until the Final Release Date (as defined in the Escrow Agreement) of the Escrow Agreement.

1.8 Pooling of Interests. The parties intend that the Merger be treated as a "pooling of interests" for accounting purposes. WAIS and AOL shall use best efforts to obtain and deliver Affiliates Agreements in the forms of Exhibits 4.14 and 5.1.4, respectively, promptly following the execution of this Agreement from their respective affiliates.

## **2. REPRESENTATIONS AND WARRANTIES OF WAIS AND BREWSTER KAHLE**

Subject to the limitations contained in Section 10 below, WAIS and Brewster Kahle each jointly and severally hereby represent and warrant that, except as set forth on the corresponding section of the WAIS Schedule of Exceptions delivered to AOL and Sub simultaneously herewith (the "WAIS Schedules"), and, provided, however, that all references to the "knowledge" of WAIS shall be deemed to refer to the knowledge of Mr. Kahle:

2.1 Organization and Good Standing. WAIS is a corporation duly organized, validly existing and in good standing under the laws of the state of California, has the corporate power and authority to own, operate and lease its properties and to carry on its business as now conducted and as proposed to be conducted, and is qualified as a foreign corporation in the jurisdictions listed in Section 2.1 of the WAIS Schedules. WAIS is qualified to transact business in each jurisdiction in which the failure to so qualify would have a Material Adverse Effect. "Material Adverse Effect" means a material adverse effect on the business, operations, financial condition or prospects of WAIS.

### 2.2 Power, Authorization and Validity.

2.2.1 WAIS has the corporate right, power, legal capacity and authority to enter into and perform its obligations under this Agreement, the Agreement of Merger, the Escrow Agreement, the WAIS Affiliates Agreement and the Assignment of Copyright and Other Intellectual Property Rights (the "WAIS Ancillary Agreements"). Except for any approval required by the shareholders of WAIS, the execution, delivery and performance of this Agreement and the WAIS Ancillary Agreements have been duly and validly approved and authorized by the Board of Directors of WAIS and WAIS will use its best efforts to have it duly and validly approved by the shareholders of WAIS prior to the Effective Time.

2.2.2 No governmental filing, authorization or approval is necessary to enable WAIS to enter into, and to perform its obligations under, this Agreement and the WAIS Ancillary Agreements, except for (a) the filing of the Agreement of Merger with the Secretary of State of the State of California and the filing of appropriate documents with the relevant authorities of other states in which WAIS is qualified to do business, if any, and (b) such filings as may be required to comply with federal and state securities laws. No third party consents are necessary to enable WAIS to enter into, and to perform its obligations under, this Agreement and the WAIS Ancillary Agreements, except for (x) the approval of this Agreement and the Agreement of Merger by the shareholders of

WAIS, and (y) consents required under contracts disclosed in the WAIS Schedules as exceptions to the representation made in the last sentence of Section 2.5 hereof.

2.2.3 Assuming the due authorization, execution and delivery by the other parties to this Agreement and the WAIS Ancillary Agreements, this Agreement and the WAIS Ancillary Agreements are, or when executed by WAIS will be, valid and binding obligations of WAIS enforceable in accordance with their respective terms, except as to the effect, if any, of (a) applicable bankruptcy and other similar laws affecting the rights of creditors generally, (b) rules of law governing specific performance, injunctive relief and other equitable remedies (regardless of whether such enforcement is sought in a proceeding at law or in equity), and (c) the enforceability of provisions requiring indemnification in connection with the offering, issuance or sale of securities; provided, however, that the Agreement of Merger, the Escrow Agreement, Noncompetition Agreements with Brewster Kahle, ~~John Duhring~~, Bruce Gilliat, and Harry Morris ~~and Nicholas M. Scharf~~, and the WAIS Ancillary Agreements (other than the WAIS Affiliates Agreement executed pursuant to Section 4.14 hereof) will not be effective until the Effective Time.

2.3 Capitalization. The authorized capital stock of WAIS consists of 15,000,000 shares of Common Stock, of which 7,525,000 shares are issued and outstanding. All issued and outstanding shares of WAIS Common Stock have been duly authorized and validly issued, are fully paid and nonassessable, are not subject to any right of rescission, and have been offered, issued, sold and delivered in compliance with all registration or qualification requirements (or applicable exemptions therefrom) of applicable federal and state securities laws. WAIS has reserved 2,250,000 shares of its Common Stock for issuance to employees, officers and directors of WAIS pursuant to its 1994 Stock Plan. There are outstanding options to purchase a total of 1,908,000 shares of WAIS's Common Stock, of which 591,375 shares of WAIS Common Stock are issuable pursuant to options that will be vested on or prior to March 31, 1995. Section 2.3 to the WAIS Schedules sets forth a true and correct list of all holders of WAIS Common Stock and options for WAIS Common Stock and the number of such shares and options held by each holder. Except as set forth in Section 2.3 to the WAIS Schedules, there are no options, warrants, conversion privileges or preemptive or other rights or agreements outstanding to purchase or otherwise acquire any of WAIS's authorized but unissued capital stock, and there is no liability for dividends accrued but unpaid. Except as set forth in Section 2.3 to the WAIS Schedules, there are no voting agreements, rights of first refusal or other restrictions (other than normal restrictions on transfer under applicable federal and state securities laws) applicable to any of WAIS's outstanding securities.

2.4 Subsidiaries. WAIS does not have any subsidiaries or any equity interest, direct or indirect, in any corporation, partnership, joint venture or other business entity.

2.5 No Violation of Existing Agreements. Neither the execution nor delivery of this Agreement nor any of the WAIS Ancillary Agreements, nor the consummation of the transactions contemplated hereby or thereby, will conflict with, or (with or without notice or lapse of time, or both) result in a termination, breach, impairment or violation

of, or cause an acceleration or amendment of any obligation under, (a) any provision of the Articles of Incorporation or Bylaws of WAIS, as currently in effect, (b) in any material respect, any instrument or contract to which WAIS is a party or by which WAIS or its assets are bound, or (c) any federal, state, local or foreign judgment, writ, decree, order, statute, or regulation applicable to WAIS. Except as set forth in Section 2.5 to the WAIS Schedules, the consummation of the Merger in and of itself will not require the consent of any third party and will not have a material adverse effect upon any rights, licenses, franchises, leases or agreements of WAIS pursuant to the terms of those agreements.

2.6 Litigation. There is no action, proceeding, claim or investigation pending against WAIS before any federal, state, municipal, foreign or other court or administrative agency, department, board or instrumentality, and, to the best of the knowledge of WAIS, no such action, proceeding, claim or investigation has been threatened. There is no substantial basis for any shareholder or former shareholder of WAIS, or any other person, firm, corporation or entity, to assert a claim against WAIS, Sub or AOL based upon: (a) ownership or rights to ownership of any securities of WAIS Stock, (b) any rights as or to become a holder of securities of WAIS, including any option or preemptive rights or rights to notice or to vote, or (c) any rights under any agreement between WAIS and any of its shareholders or former shareholders or option holders or former option holders in their capacity as such.

2.7 WAIS Financial Statements. WAIS has delivered to AOL as Section 2.7 to the WAIS Schedules WAIS's unaudited balance sheet as of December 31, 1994 (the "Balance Sheet Date"), its unaudited income statement for the month ended December 31, 1994, and its unaudited balance sheets and unaudited income statements for the three months ended September 30, 1994; June 30, 1994; March 31, 1994; December 31, 1993; September 30, 1993; June 30, 1993; March 31, 1993 and September 30, 1992 (collectively, the "WAIS Financial Statements"). The WAIS Financial Statements (a) are in accordance with the books and records of WAIS, (b) fairly present the financial condition of WAIS at the respective dates therein indicated and the results of operations for the respective periods therein specified, and (c) have been prepared in accordance with generally accepted accounting principles applied on a consistent basis. As of the Balance Sheet Date, WAIS had no material debt, liability or obligation of any nature, whether accrued, absolute, contingent or otherwise, and whether due or to become due, that was not reflected, reserved against or disclosed in the WAIS Financial Statements, except for those that are not required to be reported in accordance with generally accepted accounting principles.

2.8 Taxes. All federal, state, local and foreign tax and information returns of WAIS due prior to the Effective Time (after giving effect to any extensions of such due date) have been or will be filed when due (including any extensions of such due date), and all amounts shown as due thereon on or before the Effective Time of the Merger have been or will be paid on or before such due date. Complete duplicate copies of all such tax and information returns have been provided or made available by WAIS to AOL. WAIS is not delinquent in the filing of any tax returns, and no deficiencies for any tax have been

threatened, claimed, proposed or assessed which have not been settled or paid. No tax return of WAIS has ever been audited by the Internal Revenue Service. No tax return of WAIS is currently under examination by any taxing authority nor is WAIS on notice that any such examination is threatened or forthcoming. The December 31, 1994 unaudited balance sheet (the "WAIS 1994 Balance Sheet") that comprises a part of the WAIS Financial Statements (i) fully accrues all actual and contingent liabilities for Taxes with respect to all periods through December 31, 1994 and WAIS will not incur any Tax liability in excess of the amount reflected on the WAIS 1994 Balance Sheet with respect to such periods, and (ii) properly accrues in accordance with GAAP all liabilities for Taxes payable after December 31, 1994 with respect to all transactions and events occurring on or prior to such date. For the purposes of this Section, the terms "tax" and "taxes" include all federal, state, local and foreign income, gains, franchise, excise, property, sales, use, employment, license, payroll, occupation, recording, value added or transfer taxes, governmental charges, fees, levies or assessments (whether payable directly or by withholding), and, with respect to such taxes, any estimated tax, interest and penalties or additions to tax and interest on such penalties and additions to tax. For the purposes of this Section, an accrual or reserve for taxes will not be deemed to cover penalties for tax filing deficiencies unless the portion of such accrual or reserve attributable to interest or penalties is expressly identified as such.

2.9 Title to Properties. WAIS has good and marketable title to all of its assets as shown on the balance sheet as of the Balance Sheet Date included in the WAIS Financial Statements, free and clear of all liens, charges or encumbrances, other than for taxes not yet due and payable or as otherwise listed on Section 2.9 to the WAIS Schedules. The machinery and equipment included in such properties are in all material respects in good condition and repair, normal wear and tear excepted, and all leases of real or material personal property to which WAIS is a party are fully effective and afford WAIS peaceful and undisturbed possession of the subject matter of the lease. WAIS is not in violation of any zoning, building, safety or environmental ordinance, regulation or requirement or other law or regulation applicable to the operation of owned or leased properties (the violation of which would have a Material Adverse Effect), and WAIS has not received any notice of such violation with which it has not complied or had waived.

2.10 Absence of Certain Changes. Except as contemplated by this transaction or as set forth in Section 2.10 to the WAIS Schedules, since the Balance Sheet Date there has not been with respect to WAIS:

(a) any change in the financial condition, properties, assets, liabilities, business or operations of WAIS which change by itself or in conjunction with all other such changes, whether or not arising in the ordinary course of business, has had, or will have, a Material Adverse Effect on WAIS;

(b) any contingent liability incurred by WAIS as guarantor or surety with respect to the obligations of others, which contingent liability is in excess of \$10,000, individually, or \$25,000 in the aggregate;

(c) any mortgage, encumbrance or lien placed on any of the properties of WAIS other than in the ordinary course of business (provided that such mortgage, encumbrance or lien in the ordinary course is not in excess of \$10,000, individually, or \$25,000 in the aggregate);

(d) any material obligation or liability incurred by WAIS;

(e) any purchase or sale or other disposition, or any agreement or other arrangement for the purchase, sale or other disposition, of any of the properties or assets of WAIS other than in the ordinary course of business or in amounts less than \$50,000 in the aggregate;

(f) any damage, destruction or loss, whether or not covered by insurance, which has a Material Adverse Effect;

(g) any declaration, setting aside or payment of any dividend on, or the making of any other distribution in respect of, the capital stock of WAIS, any split, combination or recapitalization of the capital stock of WAIS or any direct or indirect redemption, purchase or other acquisition of the capital stock of WAIS (other than the issuance of shares of WAIS Common Stock upon exercise of Current WAIS Options);

(h) any labor dispute or claim of unfair labor practices which has a Material Adverse Effect, any change in the compensation payable or to become payable to any of WAIS's officers, employees or agents earning compensation at an anticipated annual rate in excess of \$60,000, or any bonus payment or arrangement made to or with any of such officers, employees or agents; or any change in the compensation payable or to become payable to any of WAIS's other officers, employees or agents other than normal annual raises in accordance with past practice and disclosed to AOL in writing or any bonus payment or arrangement made to or with any of such officers, employees or agents other than normal bonuses or arrangements made in accordance with past practices and disclosed to AOL in writing;

(i) any payment or discharge of a material lien or liability thereof, which lien or liability was not either (i) shown on the balance sheet as the Balance Sheet Date included in the WAIS Financial Statements; (ii) discharged in accordance with the terms of any contractual obligations existing on the date hereof and disclosed to AOL on the WAIS Schedules; or (iii) incurred in the ordinary course of business after the Balance Sheet Date; or

(j) any obligation or material liability incurred by WAIS to any of its officers, directors or shareholders, or any loans or advances made to any of its officers, directors or shareholders except normal compensation, commissions, bonuses and expense allowances payable to officers consistent with past practice or consistent with WAIS contractual obligations elsewhere described in the WAIS Schedules.

2.11 Agreements and Commitments. Except as set forth in Section 2.11 to the WAIS Schedules or as listed in Section 2.12, Section 2.15.3 or Section 2.15.6,

respectively, to the WAIS Schedules, as required by Section 2.12, Section 2.15.3 or Section 2.15.6, as the case may be, WAIS is not a party or subject to any oral or written executory agreement, obligation or commitment which is described below:

(a) (i) Contract, commitment, letter contract or purchase order providing for payments by WAIS in an amount of (1) \$35,000 or more in the ordinary course of business to any one vendor; or (2) \$20,000 or more not in the ordinary course of business to any one vendor; or (ii) quotation, bid or proposal providing for payments by WAIS in an amount of (1) \$35,000 or more in the ordinary course of business to any one vendor; or (2) \$20,000 or more not in the ordinary course of business;

(b) License agreement as licensor or licensee (except in cases where WAIS is a licensor or a licensee for standard (except for immaterial deviations) non-exclusive software licenses granted to end-user customers in the ordinary course of business, the forms of which have been provided or made available to AOL), but in all events including site licenses for products and each agreement that provides for either the delivery of source code to the licensee or escrow of such source code for the benefit of such licensee;

(c) Agreement by WAIS to encumber, transfer or sell rights in or with respect to any WAIS Intellectual Property (as defined in Section 2.12 hereof) (except in cases where WAIS is a licensor for standard (except for immaterial deviations) non-exclusive software licenses granted to end-user customers in the ordinary course of business, the forms of which have been provided or made available to AOL's counsel);

(d) Agreement for the sale or lease of real or tangible personal property involving more than \$25,000 per year;

(e) Written dealer, distributor, sales representative, original equipment manufacturer, value added remarketer or other agreement for the ongoing distribution of WAIS's products;

(f) Franchise agreement or financing statement;

(g) Stock redemption or purchase agreement;

(h) Joint venture contract or arrangement or any other agreement that involves a sharing of profits with other persons;

(i) Instrument evidencing indebtedness for borrowed money in an amount exceeding \$10,000 by way of direct loan, sale of debt securities, purchase money obligation, conditional sale, lease, guarantee or otherwise; or

(j) Contract containing covenants purporting to limit WAIS's freedom to compete in any line of business in any geographic area or in any functional area.



All agreements, obligations and commitments listed in Section 2.11, Section 2.12, Section 2.15.3 or Section 2.15.6 to the WAIS Schedules are valid and in full force and effect in all material respects and a true and complete copy of each such executed agreement, ~~obligations~~ **obligation** or commitment has been delivered to AOL. Neither WAIS, nor, to the knowledge of WAIS, any other party is in breach or default in any material respect under the terms of any such agreement, obligation or commitment. WAIS has no material liability for renegotiation of government contracts or subcontracts, if any.

**2.12 Intellectual Property.** WAIS owns all right, title or interest in or has the right to use and transfer to AOL such patents; patent applications; trademarks; service marks; trade names; copyrights; registrations and applications for registration of trademark, service mark, tradename and copyright rights; trade secrets; know-how; technology and other intellectual property and proprietary rights ("Intellectual Property Rights") in development by WAIS or reasonably necessary to the conduct of its business as presently conducted and as proposed to be conducted as of the date hereof ("WAIS Intellectual Property"). WAIS has taken necessary measures to protect all WAIS Intellectual Property, and there is no infringement of such WAIS Intellectual Property by any third party. Set forth in Section 2.12 to the WAIS Schedules delivered to AOL herewith is a true and complete list of all copyright and trademark registrations and applications therefor and all patents and patent applications for WAIS Intellectual owned by WAIS, and there is no cancellation, termination or expiration of any such registration or patent that is reasonably foreseeable. Copies of all forms of non-disclosure or confidentiality agreements utilized to protect the WAIS Intellectual Property have been provided to AOL. The business of WAIS as presently conducted by WAIS as of the date hereof with product produced prior to the Effective Time (but including announced but not yet released software products) does not and will not cause WAIS to infringe or violate any of the Intellectual Property Rights of any other person. WAIS has not received any claim or notice of infringement or potential infringement of the Intellectual Property Rights of any other person. WAIS has the right to produce all of its products and provide all of its services and the right to use all of its registered user lists, and is not using any Intellectual Property Rights of any former employer of any past or present employees.

**2.13 Compliance with Laws.** WAIS has complied, or prior to the Closing Date will have complied, and is or will be at the Closing Date in full compliance, in all material respects, with all applicable laws, ordinances, and regulations and all orders, writs, injunctions, awards, judgments and decrees, applicable to WAIS or to its assets, properties and business (the violation of which or failure to comply with would have a Material Adverse Effect), including, without limitation: (a) all applicable federal and state securities laws and regulations, (b) all applicable federal, state and local laws, ordinances and regulations, and all orders, writs, injunctions, awards, judgments and decrees, pertaining to (i) the sale, licensing, leasing, ownership or management of WAIS's owned, leased or licensed real or personal property, products and technical data, (ii) employment and employment practices, terms and conditions of employment, and wages and hours, and (iii) safety, health, fire prevention, environmental protection (including toxic waste

disposal and related matters described in Section 2.21 hereof), building standards, zoning and other similar matters, (c) the Export Administration Act and regulations promulgated thereunder and all other laws, regulations, orders, writs, injunctions, judgments and decrees applicable to the export or re-export of controlled commodities or technical data controlled under the Export Administration Act and (d) the Immigration Reform and Control Act. WAIS has received all material permits and approvals from, and has made all material filings with, third parties, including government agencies and authorities, that are necessary in connection with its and their present business.

2.14 Certain Transactions and Agreements. To WAIS's knowledge, none of the officers or directors of WAIS, nor any member of any officer's or director's immediate family, has any direct or indirect ownership interest in any firm or corporation that competes with WAIS (except with respect to any interest in less than one percent of the stock of any corporation whose stock is publicly traded). To WAIS's knowledge, none of said officers or directors, or any member of any officer's or director's immediate family, is or has been directly or indirectly interested in any material contract or informal arrangement with WAIS within the last three years, except for compensation for services as an officer, director, consultant or employee of WAIS. To WAIS's knowledge, none of such officers or directors or immediate family members has any interest in any property, real or personal, tangible or intangible, including but not limited to WAIS Intellectual Property, used in the business of WAIS, except for the normal rights of a shareholder.

2.15 Employees.

2.15.1 WAIS has no employment contracts or material consulting agreement currently in effect that is not terminable at will (other than agreements with the sole purpose of providing for the confidentiality of proprietary information or assignment of inventions). All officers, employees and consultants of WAIS having access to proprietary information of WAIS have executed and delivered to WAIS an agreement regarding the protection of such proprietary information and the assignment of inventions to WAIS; copies of the forms of all such agreements have been delivered to AOL.

2.15.2 WAIS: (i) has never been and is not now subject to a union organizing effort, (ii) is not subject to any collective bargaining agreement with respect to any of its employees, (iii) is not subject to any other contract, written or oral, with any trade or labor union, employees' association or similar organization, and (iv) has no material current labor dispute.

2.15.3 Section 2.15.3 to the WAIS Schedules contains a list of all pension, retirement, disability, medical, dental or other health plans, life insurance or other death benefit plans, profit sharing, deferred compensation agreements, stock, option, bonus or other incentive plans, vacation, sick, holiday or other paid leave plans, severance plans or other similar employee benefit plans maintained by WAIS (the "Employee Plans"), including, without limitation, all "employee benefit plans" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Each of the Employee Plans, and its operation and administration, is in all

material respects, in compliance with all applicable federal, state, local and other governmental laws and ordinances, orders, rules and regulations, including the requirements of ERISA and the Code. All such Employee Plans that are "employee pension benefit plans" (as defined in Section 3(2) of ERISA) have received favorable determination letters that such plans satisfy the qualification requirements of the Tax Equity and Fiscal Responsibility Act of 1982, the Deficit Reduction Act of 1984 and the Retirement Equity Act of 1984. In addition, WAIS has never been a participant in any "prohibited transaction," within the meaning of Section 406 of ERISA, with respect to any employee pension benefit plan (as defined in Section 3(2) of ERISA) which WAIS sponsors as employer or in which WAIS participates as an employer, which was not otherwise exempt pursuant to Section 408 of ERISA (including any individual exemption granted under Section 408(a) of ERISA), or which could result in an excise tax under the Code. The group health plans, as defined in Section 4980B(g) of the Code, that benefit employees of WAIS are in compliance with the continuation coverage requirements of subsection 4980B of the Code. There are no outstanding violations of Section 4980B of the Code with respect to any Employee Plan, covered employees or qualified beneficiaries.

2.15.4 To the knowledge of WAIS's management, no employee of WAIS is in material violation of (a) any term of any employment contract, patent disclosure agreement or noncompetition agreement or (b) any other contract or agreement, or any restrictive covenant, relating to the right of any such employee to be employed by WAIS or such Subsidiary or to use trade secrets or proprietary information of others. To its knowledge after due inquiry, the mere fact of employment of any employee of WAIS does not subject WAIS to any liability to any third party.

2.15.5 WAIS is not a party to any (a) agreement with any executive officer or other key employee of WAIS (i) the benefits of which are contingent, or the terms of which are materially altered, upon the occurrence of a transaction involving WAIS in the nature of any of the transactions contemplated by this Agreement and the Agreement of Merger, (ii) providing any term of employment or compensation guarantee or (iii) providing severance benefits or other benefits or payments after the termination of employment of such employee regardless of the reason for such termination of employment, or (b) agreement or plan, including, without limitation, any stock option plan, stock appreciation rights plan or stock purchase plan, any of the benefits of which will be materially increased, or the vesting of benefits of which will be materially accelerated, by the occurrence of any of the transactions contemplated by this Agreement and the Agreement of Merger, or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement and the Agreement of Merger. WAIS is not obligated to make any excess parachute payment, as defined in Section 280G(b)(1) of the Code, nor will any excess parachute payment be deemed to have occurred as a result of or arising out of the Merger.

2.15.6 A list of all current employees, officers and consultants of WAIS and their current compensation, bonus plans, commission plans, vacation rights and

severance rights is set forth on Section 2.15.6 to the WAIS Schedules. WAIS is current in paying all amounts owing to such parties shown in such Section.

2.15.7 All contributions due from WAIS with respect to any of the Employee Plans have been made or accrued on WAIS's financial statements, and no further contributions will be due or will have accrued thereunder as of the Closing Date.

2.16 Corporate Documents. WAIS has made available to AOL for examination all material documents and information listed in the WAIS Schedule of Exceptions or other Schedules called for by this Agreement which have been requested by AOL's legal counsel, including, without limitation, the following: (a) copies of WAIS's Articles of Incorporation and Bylaws as currently in effect; (b) WAIS's Minute Books containing all records of all proceedings, consents, actions and meetings of WAIS's board of directors and shareholders since inception; (c) WAIS's authoritative records reflecting all stock issuances and transfers; (d) all permits, orders and consents issued by any regulatory agency with respect to WAIS, or any securities of WAIS, and all applications for such permits, orders and consents and (e) copies or forms of all stock purchase agreements, warrants, option plans, grants and exercise agreements and, where forms of agreements are provided rather than copies of the signed documents, an accurate list showing the names of the security holder, numbers of shares, exercise or purchase prices, grant dates, vesting dates, exercise dates, expiration dates and all other relevant data necessary for AOL to issue the AOL Common Stock and AOL Options.

2.17 No Brokers. WAIS is not obligated for the payment of fees or expenses of any investment banker, broker or finder in connection with the origin, negotiation or execution of this Agreement or the Agreement of Merger or in connection with any transaction contemplated hereby or thereby.

2.18 Disclosure. Neither this Agreement, its Schedules and exhibits, nor any of the certificates or documents to be delivered by WAIS to AOL under this Agreement, contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements contained herein and therein, in light of the circumstances under which such statements were made, not misleading.

2.19 Books and Records.

2.19.1 The financial books, records and accounts of WAIS (a) have been maintained in accordance with good business practices on a basis consistent with prior years, (b) are stated in reasonable detail and accurately and fairly reflect the transactions and dispositions of the assets of WAIS and (c) accurately and fairly reflect the basis for the WAIS Financial Statements.

2.19.2 WAIS has devised and maintains a system of internal accounting controls sufficient to provide reasonable assurances that (a) transactions are executed in accordance with management's general or specific authorization; and (b) transactions are recorded as necessary (i) to permit preparation of financial statements in conformity with

generally accepted accounting principles or any other criteria applicable to such statements and (ii) to maintain accountability for assets.

2.20 Insurance. WAIS maintains and at all times during the prior three years has maintained fire and casualty, general liability, business interruption, product liability and sprinkler and water damage insurance as listed on Section 2.20 to the WAIS Schedules and has paid the annual premiums and made the amounts of annual claims under each such policy over the last three years as is indicated on Section 2.20 to the WAIS Schedules.

2.21 Environmental Matters. Except as set forth in the WAIS Schedules, to the best knowledge of WAIS:

2.21.1 During the period that WAIS has leased its real properties, there have been no disposals or releases of Hazardous Materials (as defined below) from, or any presence of such Hazardous Materials on, such properties in excess of government required reporting limits which would have a Material Adverse Effect. WAIS has no knowledge of any presence, generation, manufacturing, disposals, releases or threatened releases of Hazardous Materials on or from any of such properties, which may have occurred prior to WAIS having taken possession of any of such properties, which would have a Material Adverse Effect. For purposes of this Agreement, the terms "disposal," "release," and "threatened release" shall have the definitions assigned thereto by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended ("CERCLA"). For the purposes of this Section 2.21, "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste which is or becomes prior to the Closing Date regulated under, or defined as a "hazardous substance," "pollutant," "contaminant," "toxic chemical," "hazardous material," "toxic substance" or "hazardous chemical" under (i) CERCLA; (ii) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11001 et seq.; (iii) the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; (iv) the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq.; (v) the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 651 et seq.; (vi) regulations promulgated under any of the above statutes; or (vii) any applicable state or local statute, ordinance or regulation that has a scope or purpose similar to those identified above.

2.21.2 During the time that WAIS has owned or leased its real properties, there has been no litigation, proceeding or administrative action brought or threatened in writing against WAIS, or any settlement reached by WAIS with any party or parties alleging the presence, disposal, release or threatened release of any Hazardous Materials on, from or under any of such properties.

2.21.3 During the period that WAIS has leased its properties, no Hazardous Materials have been transported from such properties to any site or facility now listed or proposed for listing on the National Priorities List, at 40 C.F.R. Part 300, or any list with a similar scope or purpose published by any state authority.

2.22 Federal and State Government Contracts.

2.22.1 Definitions. The following capitalized terms, when used in this Section 2.22 shall have the respective meanings set forth below:

(a) "Affiliate" means, with respect to a specified person, any subsidiary, joint venture or partnership controlled by the specified person (and any predecessor that was under the control of the specified person that remains subject to possible government audit).

(b) "Bid" means any bid, proposal or quotation made by WAIS, or by a contractor team or joint venture in which WAIS is participating, that, if accepted, would lead to a Government Prime Contract or a Government Subcontract.

(c) "Government Contract" means any Government Prime Contract, Government Subcontract, Bid or Team Agreement.

(d) "Government Prime Contract" means any prime contract, basic ordering agreement, letter contract, purchase order, delivery order, change order, arrangement or other commitment of any kind, on which final payment either has not been made, or was made within the past three years, between WAIS and either the U.S. Government or a State Government.

(e) "Government Subcontract" means any subcontract, basic ordering agreement, letter subcontract, purchase order, delivery order, change order, arrangement or other commitment of any kind, on which final payment has not been made, between WAIS and any prime contractor to either the U.S. Government or a State Government or any subcontractor with respect to a Government Prime Contract.

(f) "State Government" means any state, territory or possession of the United States or any department or agency of any of the above with statewide jurisdiction and responsibility.

(g) "Team Agreement" has the same meaning as the term, "Contractor team arrangement," as defined in Federal Acquisition Regulation ("FAR") 9.601.

(h) "U.S. Government" means the United States Government or any department, agency or instrumentality thereof.

2.22.2 Status of Government Contracts. A list of each and every Government Contract to which WAIS is a party is set forth in Section 2.22 to the WAIS Schedules. Except as set forth on Section 2.22 to the WAIS Schedules:

(a) WAIS has fully complied with all material terms and conditions of such Government Contracts, including all clauses, provisions and requirements incorporated expressly by reference or by operation of law therein;

(b) WAIS has complied in all material respects with all requirements of statute, rule, regulation, executive order or other agreement pertaining to such Government Contracts;

(c) All representations and certifications executed, acknowledged or set forth in or pertaining to such Government Contracts were current, accurate and complete as of their effective date, and WAIS has complied in all material respects with all such representations and certifications;

(d) Neither the U.S. Government, any State Government nor any prime contractor, subcontractor or other person has notified WAIS in writing that WAIS has breached or violated any statute, rule, regulation, certification, representation, clause, provision or requirement;

(e) The pricing, cost accounting, estimating, property and resource planning and procurement systems relating to the Government Contracts have been properly disclosed to the U.S. Government and such disclosures are in material compliance with applicable federal procurement law and regulations, including the FAR cost principles (FAR Part 31) and Cost Accounting Standards (48 C.F.R. Ch. 99);

(f) Neither WAIS nor any of its directors, officers or employees is (or has been at any time during the past five years) suspended or debarred from doing business with the U.S. Government or any State Government, or has been declared nonresponsible or ineligible for U.S. Government or State Government contracts. Except as set forth on Section 2.22 to the WAIS Schedules, WAIS knows of no circumstance that would warrant the institution of suspension or debarment proceedings against WAIS, criminal or civil fraud or other criminal or civil proceedings against any of the officers, directors or employees of WAIS, or a determination of nonresponsibility or ineligibility of WAIS in the future;

(g) No termination for convenience, termination for default, cure notice or show cause notice has been issued;

(h) No cost incurred or other invoiced charge by WAIS has been questioned or disallowed in writing;

(i) No money due to WAIS has been withheld or set off or subject to attempts to withhold or setoff;

(j) WAIS and its respective employees hold such security clearances as are required to perform Government Contracts of the type performed prior to

the date hereof by WAIS. There are no facts or circumstances that could reasonably be expected to result in the suspension or termination of such clearances, or that could reasonably be expected to render WAIS ineligible for such security clearances in the future. All security measures required by Government Contracts or applicable laws have been complied with in all respects; and

(k) All computer software and technical data developed by WAIS and delivered to a State Government or to the U.S. Government under a Government Contract, were developed exclusively at private expense, as that term is defined by FAR Subpart 27.4, Department of Defense FAR Supplement (DFARS) Subpart 227.4, or other applicable law or regulation, and WAIS has complied with all contractual and statutory requirements including, without limitation, pre-and post- award notification, collateral license agreements, and restrictive markings, to assure that such software or technical data will be or has been delivered with restricted rights (software) or limited rights (technical data).

2.22.3 Investigations and Audits. Except as set forth in Section 2.22 to the WAIS Schedules:

(a) Neither WAIS nor any of the directors, officers or employees or, to the knowledge of WAIS, any agents or consultants of WAIS is or has been, during any of the last five (5) years, under administrative, civil or criminal investigation, indictment or information, audit or internal investigation with respect to any alleged irregularity, misstatement or omission arising under or relating to any Government Contract;

(b) WAIS has not made a voluntary disclosure to the U.S. Government or any State Government with respect to any alleged irregularity, misstatement or omission arising under or relating to a Government Contract;

(c) WAIS has no knowledge of any irregularity, misstatement or omission arising under or relating to any Government Contract that has led or could reasonably be expected to lead, either before or after the Closing Date, to any of the consequences set forth in (a)-(b) above, or to any other damage, penalty assessment, recoupment of payment, or disallowance of cost; and

(d) WAIS has received no audit reports of noncompliances in respect of any Government Contract.

2.22.4 Financing Arrangements and Claims. Except as set forth on Section 2.22 to the WAIS Schedules, there exist(s):

(a) no accounts receivable financing arrangements with respect to any Government Contract of WAIS;



(b) no written notice of any outstanding claims against WAIS, either by the U.S. Government, any State Government, or by any prime contractor, subcontractor, vendor or other third party, arising under or relating to any Government Contract;

(c) no facts that are known by WAIS upon which such a claim may reasonably be based in the future;

(d) no disputes between WAIS and the U.S. Government, any State Government or any prime contractor, subcontractor or vendor arising under or relating to any Government Contract; and

(e) no facts that are known by WAIS over which such a dispute may reasonably be expected to arise in the future.

2.22.5 Claims Against the Government. WAIS has no interest in any pending or planned claim against the U.S. Government, any State Government or any prime contractor, subcontractor or vendor arising under or relating to any Government Contract.

## 2.23 WAIS Products and Services.

2.23.1 Section 2.23 to the WAIS Schedules contains a complete list of all software license and/or sale agreements (other than purchase orders) and all production and software development and service agreements with respect to products under development and services on projects currently being performed by WAIS for third parties with a scheduled delivery or completion date on or prior to December 31, 1996 ("Projects").

new criteria to be worked out between AOL and WAIS] 2.23.2 2.32.2 Section 2.23 to the WAIS Schedules sets forth, for each Project, the following: (a) a history of payments received by WAIS by calendar quarter for such Project in the two-year period ending March 31, 1995; (b) if any refundable advances were made with respect to such Project, the total amount thereof remaining subject to refund; (c) if WAIS has not completed performance of such Project, the currently scheduled delivery or completion date (which WAIS believes to be reasonable); (d) if WAIS has not completed performance of such Project, a complete schedule of milestone events and any related payments, including both milestones already achieved and those scheduled for the future; (e) whether any significant milestone for such Project has ever been missed by more than thirty (30) days, including whether any uncompleted milestones are likely not to be met by such time period based on facts currently known to WAIS; and (f) an approximate total budget for such Project including both internal and external expenses (which budget WAIS believes is reasonable) and the approximate expenses incurred through March 31, 1995. ongoing production services Projects for which (i) collected revenue exceeds One Hundred Thousand Dollars (\$100,000) and (ii) WAIS has incurred direct costs in excess of two (2) times collected revenue.

2.24 Development Tools. Section 2.24 to the WAIS Schedules contains a complete list of all software development tools used or intended to be used by WAIS, except for any such tools that are generally available and are used in their generally available form (such as commercially available compilers and freeware) (the "Development Tools"). Section 2.24 to the WAIS Schedules also sets forth, for each Development Tool: (a) for any Development Tool not entirely developed internally by WAIS employees, the identity of the independent contractors and consultants involved in such development and a list of the agreements with such independent contractors and consultants; (b) a list of any third parties with any rights to receive royalties or other payments with respect to such Development Tool, and a schedule of all such royalties payable; (c) a list of any restrictions on WAIS's unrestricted right to use and distribute such Development Tool; and (d) a list of all agreements with third parties for the use by such third party of such Development Tool. WAIS has sufficient right, title and interest in and to the Development Tools for the conduct of its business as currently conducted and as proposed to be conducted.

### **3. REPRESENTATIONS AND WARRANTIES OF AOL AND SUB**

AOL and Sub hereby jointly and severally represent and warrant to WAIS and to the shareholders of WAIS, that, except as set forth on the AOL Schedule of Exceptions delivered to WAIS simultaneously herewith:

3.1 Organization and Good Standing. AOL and Sub are corporations duly organized, validly existing and in good standing under the laws of the States of Delaware and California, respectively, and each has the corporate power and authority to own, operate and lease its properties and to carry on its business as now conducted and as proposed to be conducted.

#### **3.2 Power, Authorization and Validity.**

3.2.1 AOL and Sub each has the corporate right, power, legal capacity and authority to enter into and perform its obligations under this Agreement, and all agreements to which AOL or Sub is or will be a party that are required to be executed pursuant to this Agreement (the "AOL Ancillary Agreements"). The execution, delivery and performance of this Agreement and the AOL Ancillary Agreements have been duly and validly approved and authorized by AOL's Board of Directors, by AOL as the sole shareholder of Sub and by Sub's Board of Directors.

3.2.2 No filing, authorization or approval, governmental or otherwise, is necessary to enable AOL or Sub to enter into, and to perform its obligations under, this Agreement and the AOL Ancillary Agreements, except for (a) the filing of the Agreement of Merger with the California Secretary of State, and the filing of appropriate documents with the relevant authorities of other states in which Sub is qualified to do business, if any and (b) such filings as may be required to comply with federal and state securities laws.

3.2.3 Assuming the due authorization, execution and delivery by the other parties to this Agreement and the AOL Ancillary Agreements, this Agreement and the

AOL Ancillary Agreements are, or when executed by AOL and Sub will be, valid and binding obligations of AOL and Sub, enforceable in accordance with their respective terms, except as to the effect, if any, of (a) applicable bankruptcy and other similar laws affecting the rights of creditors generally, (b) rules of law governing specific performance, injunctive relief and other equitable remedies, and (c) the enforceability of provisions requiring indemnification in connection with the offering, issuance or sale of securities; provided, however, that the Agreement of Merger and the AOL Ancillary Agreements (except for the AOL Affiliates Agreement) will not be effective until the Effective Time.

3.3 Shares Issued in Merger. All shares of AOL Common Stock to be issued at the Closing will be duly authorized and validly issued, fully paid and nonassessable, not subject to any right of rescission, and will have been offered, issued, sold and delivered by AOL materially in compliance with all registration or qualification requirements (or applicable exemptions therefrom) of applicable federal and state securities laws.

3.4 Disclosure. AOL has furnished WAIS with complete and accurate copies (excluding exhibits) of its annual report on Form 10-K for its fiscal year ended June 30, 1994, its quarterly report on Form 10-Q for the fiscal quarters ended September 30, 1994 and December 31, 1994 and all other reports or documents required to be filed by AOL pursuant to Section 13(a) or 15(d) of the 1934 Act since the filing of the most recent quarterly report on Form 10-Q (the "AOL Disclosure Package"). All documents contained in the AOL Disclosure Package and filed with the SEC set forth a true and accurate description of the capital stock of AOL as of the date filed. None of the written information supplied or to be supplied by AOL for inclusion in the AOL Disclosure Package, this Agreement, the exhibits and schedules hereto, and any certificates or documents to be delivered to WAIS pursuant to this Agreement, at the date such information is supplied and at the time of the meeting of the WAIS shareholders to be held to approve the Merger, when taken together, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary in order to make the statements contained herein and therein, in light of the circumstances under which such statements were made, not misleading.

#### **4. WAIS PRECLOSING COVENANTS**

During the period from the date of this Agreement until the earlier of the Effective Time or the termination of this Agreement pursuant to Section 9 hereof, except as otherwise stipulated by AOL or Sub, WAIS covenants and agrees as follows:

4.1 Advice of Changes. WAIS will promptly advise AOL in writing (a) of any event occurring subsequent to the date of this Agreement that would render any representation or warranty of WAIS contained in this Agreement, if made on or as of the date of such event or the Closing Date, untrue or inaccurate in any material respect and (b) of any change in WAIS's business, results of operations or financial condition that could be reasonably expected to have a Material Adverse Effect. To ensure compliance

with this Section 4.1, WAIS shall deliver to AOL within 20 days after the end of each monthly accounting period ending after the date of this Agreement and before the Closing Date, an unaudited balance sheet and statement of operations, which financial statements shall be prepared in the ordinary course of business, in accordance with WAIS's books and records and consistent with past practices and shall fairly present the financial position of WAIS as of their respective dates and the results of WAIS's operations for the periods then ended.

4.2 Maintenance of Business. WAIS will use its best efforts to carry on and preserve its business and its relationships with customers, suppliers, employees and others in substantially the same manner as it has prior to the date hereof and consistent with the "WAIS Inc. Power Publishing" business plan previously delivered to AOL (the "Business Plan"). If WAIS becomes aware of a material deterioration in the relationship with any material customer, supplier or key employee, it will promptly bring such information to the attention of AOL in writing and, if requested by AOL, will exert all best efforts to restore the relationship.

4.3 Conduct of Business. WAIS will continue to conduct its business and maintain its business relationships in the ordinary and usual course consistent with the Business Plan, and WAIS will not, without the prior written consent of the Chief Financial Officer or Senior Vice President of ~~Business Development~~ of AOL, not to be unreasonably withheld or delayed:

(a) borrow any money except under existing lines of credit or other existing credit arrangements and consistent with past borrowing practices or as set forth on Section 4.3 to the WAIS Schedules;

(b) enter into any transaction not in the ordinary course of business or enter into any transaction or make any commitment involving an expense or capital expenditure in excess of \$50,000 (other than end-user licenses pursuant to WAIS's standard end-user license agreement ); **and the incurring of up to \$75,000 of reasonable legal and accounting fees and disbursements in connection with the transactions contemplated by this Agreement**);

(c) encumber or permit to be encumbered any of its assets except in the ordinary course of its business consistent with past practice and if such encumbrance would not have a Material Adverse Effect;

(d) dispose of any of its material assets except in the ordinary course of business consistent with past practice;

(e) enter into any material lease or contract for the purchase or sale of any property, real or personal, tangible or intangible, except in the ordinary course of business consistent with past practice;

(f) fail to take best efforts to maintain its equipment and other assets in good working condition and repair according to the standards it has maintained to the date of this Agreement, subject only to ordinary wear and tear;

(g) terminate any management, supervisory, development or other key personnel of WAIS; or pay any bonus, royalty, increased salary or special remuneration to any officer, employee or consultant in excess of the lesser of \$6,000 or 10% of such individual's annual compensation for 1994, or \$50,000 in the aggregate for all such individuals (except pursuant to existing arrangements previously disclosed to AOL in writing); or **except as set forth on Section 4.3 to the WAIS Schedules** enter into any new employment or consulting agreement with any such person, or enter into any agreement or plan of the type described in Section 2.15;

(h) change accounting methods, other than changes required by the Financial Accounting Standards Board or other body of similar authority in rules or pronouncements to be adopted or issued after the signing of this Agreement;

(i) declare, set aside or pay any cash or stock dividend or other distribution in respect of capital stock, or redeem or otherwise acquire any of its capital stock;

(j) amend or terminate any contract, agreement or license to which it is a party (except pursuant to arrangements previously disclosed to AOL in writing) except those amended or terminated in the ordinary course of business, consistent with past practice, and which are not material in amount or effect;

(k) lend any amount to any person or entity, other than advances for travel and expenses incurred in the ordinary course of business;

(l) guarantee or act as a surety for any obligation except for the endorsement of checks and other negotiable instruments in the ordinary course of business;

(m) waive or release any material right or claim except in the ordinary course of business;

(n) issue or sell any shares of its capital stock of any class (except upon exercise of Current WAIS Options), or any other of its securities, or issue or create any warrants, obligations, subscriptions, options, convertible securities or other commitments to issue shares of capital stock, or accelerate the vesting of any outstanding option or other security except as may be required by the terms of such options or securities;

(o) split or combine the outstanding shares of its capital stock of any class or enter into any recapitalization affecting the number of outstanding shares of its capital stock of any class or affecting any other of its securities;

- (p) merge, consolidate or reorganize with, or acquire any entity other than Sub;
- (q) amend its Articles of Incorporation or Bylaws;
- (r) agree to any audit assessment by any tax authority or file any federal or state income or franchise tax return unless copies of such returns have been delivered to AOL for its review prior to filing;
- (s) license any of its technology or any WAIS Intellectual Property, except in the ordinary course of business consistent with past practice;
- (t) change any insurance coverage;
- (u) terminate the employment of any key employee listed in Section 2.15.2 of the WAIS Schedules; or
- (v) agree to do any of the things described in the preceding clauses 4.3(a) through 4.3(u).

4.4 Shareholder Approval. Unless such shareholder approval is to be obtained by written consent, WAIS will promptly and duly call a special meeting of its shareholders to be held at least seven (7) business days prior to the Effective Time, to submit this Agreement, the Agreement of Merger and related matters for the consideration and approval of the WAIS shareholders, will obtain such approval at such meeting or by means of written consent by such date. Such WAIS shareholder approval will be obtained in compliance with applicable law.

4.5 Regulatory Approvals. WAIS will execute and file, or join in the execution and filing of, any application or other document that may be necessary in order to obtain the authorization, approval or consent of any governmental body, federal, state, local or foreign which may be reasonably required, or which AOL may reasonably request, in connection with the consummation of the transactions contemplated by this Agreement. WAIS will use its best efforts to obtain all such authorizations, approvals and consents.

4.6 Necessary Consents. WAIS will use its best efforts to obtain such written consents and take such other actions as may be necessary or appropriate for WAIS in addition to those set forth in Section 4.5, to allow the consummation of the transactions contemplated hereby and to allow WAIS to carry on its business in a manner consistent with past practice after the Closing.

4.7 Litigation. WAIS will notify AOL in writing promptly after learning of any material actions, suits, proceedings or investigations by or before any court, board or governmental agency, initiated by or against WAIS, or known by WAIS to be threatened against it.

4.8 No Other Negotiations. WAIS will not, and will not authorize or permit any officer, director, employee or affiliate of WAIS, or any other person, on its behalf to, directly or indirectly, solicit or encourage any offer from any party or consider any inquiry or proposal received from any party other than AOL, concerning the possible disposition of all or any substantial portion of WAIS's business, assets or capital stock by merger, sale or any other means. If WAIS receives such an unsolicited offer, it will promptly notify AOL orally and in writing of any such offer and, in accordance with its Board of Directors' fiduciary obligation to its shareholders, may submit such offer to the WAIS shareholders for their consideration.

4.9 Access to Information. Until the Closing, WAIS will allow AOL and its agents reasonable access to the files, books, records and offices of WAIS, including, without limitation, any and all information relating to WAIS's taxes, commitments, contracts, leases, licenses, and real, personal and intangible property (including its intellectual property) and financial condition. WAIS will cause its accountants to cooperate with AOL and its agents in making available all financial information reasonably requested, including, without limitation, the right to examine all working papers pertaining to all financial statements prepared or audited by such accountants, subject, however, to the normal procedures of such accountants to not make available certain confidential information to each other.

4.10 Satisfaction of Conditions Precedent. WAIS will use its best efforts to satisfy or cause to be satisfied all the conditions precedent which are set forth in Section 8, and WAIS will use its best efforts to cause the transactions contemplated by this Agreement to be consummated, and, without limiting the generality of the foregoing, to obtain all consents and authorizations of third parties and to make all filings with, and give all notices to, third parties that may be necessary or reasonably required on its part in order to effect the transactions contemplated hereby. WAIS will promptly notify AOL in writing of its failure or inability to comply fully with this Section.

4.11 WAIS Affiliates Agreements. WAIS will continue to ask any of its affiliates who failed to execute and deliver the WAIS Affiliates Agreement to AOL on the date of this Agreement to do so prior to the Closing and will deliver any additional WAIS Affiliates Agreements so obtained to AOL at the Closing.

4.12 Assignment of Copyright and Other Intellectual Property Rights. WAIS will use best efforts to cause each employee or consultant of WAIS identified by AOL who has contributed as an author to the development of WAIS's products or the WAIS Intellectual Property and who has not previously assigned such intellectual property to WAIS to execute and deliver to WAIS (for delivery to AOL at the Closing) an acceptable form of assignment of copyright to WAIS.

4.13 Notification of Employee Problems. WAIS will promptly notify AOL if any of WAIS's officers becomes aware that any of the key employees listed in Section 4.13 to the Disclosure Schedules intends to leave its employ.

4.14 WAIS Affiliates Agreements. To ensure that the Merger will be accounted for as a "pooling of interests," contemporaneously with the execution of this Agreement, WAIS will deliver to AOL a written agreement (the "WAIS Affiliates Agreement"), in the form of Exhibit 4.14 providing that such person will make no disposition of (a) any shares of WAIS Stock (including shares of WAIS Common Stock issuable upon exercise of WAIS Options) which such affiliate owns or acquires prior to the Expiration Date (as defined in the Affiliates Agreements) or (b) AOL Common Stock (1) in the 30 day period prior to the Effective Time or (2) after the Effective Time until AOL shall have publicly released a report including the combined financial results of AOL, Sub and WAIS for a period of at least 30 days of combined operations, executed by each of WAIS's affiliates who have executed the WAIS Affiliates Agreement by the date of this Agreement.

4.15 Registration on Form S-8. WAIS will cooperate with AOL to the best of WAIS's ability in the preparation of the S-8 (as hereinafter defined).

## 5. AOL COVENANTS

5.1 Preclosing Covenants. During the period from the date of this Agreement until the earlier of the Effective Time or the Termination of this Agreement pursuant to Section 9 hereof, AOL covenants and agrees as follows:

5.1.1 Advice of Changes. AOL will promptly advise WAIS in writing of any event occurring subsequent to the date of this Agreement that would render any representation or warranty of Sub or AOL contained in this Agreement, if made on or as of the date of such event or the Closing Date, untrue or inaccurate in any material respect.

5.1.2 Satisfaction of Conditions Precedent. AOL and Sub will use their best efforts to satisfy or cause to be satisfied all the conditions precedent which are set forth in Section 7, and AOL and Sub will use their best efforts to cause the transactions contemplated by this Agreement to be consummated, and, without limiting the generality of the foregoing, to obtain all consents and authorizations of third parties and to make all filings with, and give all notices to, third parties that may be necessary or reasonably required on its part in order to effect the transactions contemplated hereby.

5.1.3 Regulatory Approvals. AOL and Sub will execute and file, or join in the execution and filing of any, application or other document that may be necessary in order to obtain the authorization, approval or consent of any governmental body, federal, state, local or foreign, which may be reasonably required, or which WAIS may reasonably request, in connection with the consummation of the transactions contemplated by this Agreement. AOL and Sub will use their best efforts to obtain all such authorizations, approvals and consents. AOL shall also take any action required to be taken under any applicable state securities or "blue sky" laws in connection with the offer and issuance of the AOL Common Stock in the Merger.



5.1.4 AOL Affiliates Agreements. To ensure that the Merger will be accounted for as a "pooling of interests," AOL will cause its affiliates to sign and deliver to AOL a written agreement (the "AOL Affiliates Agreement"), substantially in the form of Exhibit 5.1.4 providing that such person will make no disposition of AOL Common Stock (a) in the 30 day period prior to the Effective Time or (b) after the Effective Time until AOL shall have publicly released a report including the combined financial results of AOL, Sub and WAIS for a period of at least 30 days of combined operations.

5.2 Postclosing Covenants. On and after the Closing Date until the Termination of this Agreement pursuant to Section 9 hereof, AOL covenants and agrees as follows:

5.2.1 Filing on Form S-8. AOL shall use its best efforts to file with the Securities and Exchange Commission ("SEC") within thirty (30) days after the Closing Date (as hereinafter defined) a registration statement pursuant to Form S-8 or other applicable form under the Securities Act (the "S-8") with respect to the shares of AOL Common Stock that are issuable upon exercise of the AOL Options issued in exchange for the Current WAIS Options and of the Additional AOL Options.

5.2.2 Post Merger Employment Benefits. Employees of WAIS who become employed by AOL after the Merger will become eligible (within a reasonable period after the closing of the Merger) to participate in the same employee benefit plans as are generally available to similarly situated employees of AOL.

## 6. CLOSING MATTERS

6.1 The Closing. Subject to termination of this Agreement as provided in Section 9 below, the closing of the transactions provided for herein (the "Closing") will take place at the offices of Fenwick & West, Two Palo Alto Square, Palo Alto, California at 11:00 a.m., Pacific Time on ~~April~~ May \_\_, 1995, or, if all conditions to closing have not been satisfied or waived by such date, such other place, time and date as WAIS and AOL may mutually select (the "Closing Date"). Prior to the Closing, the Agreement of Merger will be filed in the office of the California Secretary of State. Accordingly, the Merger will become effective at the Effective Time.

### 6.2 Exchange of Certificates.

6.2.1 As of the Effective Time, all shares of WAIS Common Stock that are outstanding immediately prior thereto that are not WAIS Dissenting Shares will, by virtue of the Merger and without further action, cease to exist and will be converted into the right to receive from AOL the number of shares of AOL Common Stock determined as set forth in Section 1.1, subject to Section 1.2 hereof.

6.2.2 Within five business days after the Effective Time, AOL will send a transmittal letter to each holder of WAIS Stock instructing them as to the surrender of their WAIS Stock to the AOL exchange agent. As soon as practicable after the Effective Time, the WAIS Shareholders will surrender the certificate(s) for such shares (the "WAIS

Certificates"), duly endorsed as requested by AOL, to AOL for cancellation. Promptly after the Effective Time and receipt of such WAIS Certificates, AOL will issue to each such tendering holder who does not hold WAIS Dissenting Shares a certificate for the number of shares of AOL Common Stock to which such holder is entitled pursuant to Section 1.1, subject to Section 1.2 hereof, less the shares of AOL Common Stock deposited into escrow pursuant to Section 1.3 hereof, and distribute any cash payable under Section 1.2.

6.2.3 All AOL Common Stock (and, if applicable, cash for WAIS Dissenting Shares or in lieu of fractional shares) delivered upon the surrender of WAIS Certificates in accordance with the terms hereof will be deemed to have been delivered in full satisfaction of all rights pertaining to such WAIS Common Stock, except for the rights arising under this Agreement. After the Effective Time, there will be no further registration of transfers on the stock transfer books of WAIS or its transfer agent of the WAIS Common Stock. If, after the Effective Time, WAIS Certificates are presented for any reason, they will be canceled and exchanged as provided in this Section 6.2.

6.2.4 Until WAIS Certificates representing WAIS Common Stock outstanding prior to the Merger are surrendered pursuant to Section 6.2.2 above, such certificates will be deemed, for all purposes, to evidence ownership of (i) the number of shares of AOL Common Stock into which the WAIS Certificates will have been converted pursuant to Section 1.1 hereof subject to Section 1.2, including the number of shares withheld as Escrow Shares, and (ii) if applicable, cash for WAIS Dissenting Shares or in lieu of fractional shares.

6.3 Assumption of Options. Within ten days after the Effective Time, AOL will notify in writing each holder of a Current WAIS Option of the assumption of such Current WAIS Options, by AOL and conversion into AOL Options, and the number of shares of AOL Common Stock that are then subject to such AOL Option and the exercise price of such AOL Option as appropriate, as determined pursuant to Section 1.1.2 hereof.

6.4 Grant of Additional Stock Options at Closing. Upon Closing of the Merger, the options to purchase AOL Common Stock as described in Exhibit 6.4 hereto ("Additional AOL Options") will be granted under AOL's standard employee equity plan (the shares issuable under which will be registered on the S-8 to be filed within thirty (30) days after the Closing Date), in each case with an exercise price equal to the closing price per share of AOL Common Stock as quoted on the Nasdaq National Market and as reported in the Wall Street Journal on the trading day immediately prior to the Closing Date.

## **7. CONDITIONS TO OBLIGATIONS OF WAIS**

WAIS's obligations hereunder are subject to the fulfillment or satisfaction, on and as of the Closing, of each of the following conditions (any one or more of which may be waived by WAIS, but only in a writing signed by WAIS):

7.1 Accuracy of Representations and Warranties. The representations and warranties of AOL and Sub set forth in Section 3 shall be true and accurate in every material respect on and as of the Closing with the same force and effect as if they had been made at the Closing, and WAIS shall receive certificates to such effect executed by AOL's and Sub's respective Chief Financial Officers. Notwithstanding the above, AOL and WAIS agree that, if the breaches in the representations and warranties of AOL set forth in Section 3 would not, in the aggregate, result in a material adverse effect on AOL, WAIS will waive this condition to closing.

7.2 Covenants. Each of AOL and Sub shall have performed and complied in all material respects with all of their respective preclosing covenants contained in Section 5.1 on or before the Closing, and WAIS shall receive certificates to such effect signed by AOL's and Sub's respective Chief Financial Officers.

7.3 Compliance with Law. There shall be no substantial law, regulation, order, decree, or ruling by any court or governmental agency or written threat thereof, which would prohibit or render illegal the transactions contemplated by this Agreement.

7.4 Government Consents. There shall have been taken such other action, as may be required to consummate the Merger by any regulatory authority having jurisdiction over the parties and the actions herein proposed to be taken, including but not limited to any additional requirements under applicable federal and state securities laws.

7.5 Documents. WAIS shall have received all written consents, assignments, waivers, authorizations or other certificates reasonably deemed necessary by their legal counsel to consummate the transactions contemplated hereby.

7.6 Shareholder Approval. The principal terms of this Agreement and the Agreement of Merger shall have been approved and adopted as required by applicable law and WAIS's Articles of Incorporation and Bylaws.

7.7 Opinion of Counsel. WAIS shall have received from Fenwick & West, counsel to AOL, ~~an opinion substantially in the form of Exhibit 7.7.~~ **(with respect to Sub) and/or AOL's in-house counsel (with respect to AOL), opinions in customary form reasonably acceptable to WAIS and its counsel.**

7.8 Pooling Opinion. AOL shall have received from Ernst & Young LLP, an opinion, in form and substance satisfactory to AOL, that the Merger will be treated as a "pooling of interests" for accounting purposes.

7.9 Registration Rights Agreement. AOL shall have executed and delivered a Registration Rights Agreement, substantially in the form of Exhibit 7.9 hereto (the "Registration Rights Agreement"), to each holder of WAIS Stock receiving AOL Common Stock in the Merger hereunder.

## 8. CONDITIONS TO OBLIGATIONS OF AOL AND SUB

The obligations of AOL and Sub hereunder are subject to the fulfillment or satisfaction on and as of the Closing of each of the following conditions (any one or more of which may be waived by AOL and Sub, but only in a writing signed by AOL):

8.1 Accuracy of Representations and Warranties. The representations and warranties of WAIS set forth in Section 2 (as amended pursuant to Section 4.1 hereof) shall be true and accurate in every material respect on and as of the Closing with the same force and effect as if they had been made at the Closing, and AOL shall receive a certificate to such effect executed by WAIS's President.

8.2 Covenants. WAIS shall have performed and complied in all material respects with all of its covenants contained in Sections 4.1 through 4.15 on or before the Closing, and AOL shall receive a certificate to such effect signed by WAIS's President.

8.3 Compliance with Law. There shall be no substantial law, regulation, order, decree, or ruling by any court or governmental agency or written threat thereof, which would prohibit or render illegal the transactions contemplated by this Agreement.

8.4 Government Consents. There shall have been obtained at or prior to the Closing Date such material permits or authorizations, and there shall have been taken such other action, as may be required to consummate the Merger by any regulatory authority having jurisdiction over the parties and the actions herein proposed to be taken, including but not limited to requirements under applicable federal and state securities laws.

8.5 Opinion of Counsel to WAIS. AOL shall have received from Wilson, Sonsini, Goodrich & Rosati, P.C., counsel to WAIS, an opinion substantially in the form of Exhibit 8.5.

8.6 Documents. AOL shall have received all written consents, assignments, waivers, authorizations or other certificates reasonably deemed necessary by AOL's legal counsel to provide for the continuation in full force and effect of any and all material contracts and leases of WAIS and for AOL to consummate the transactions contemplated hereby, which have been identified to WAIS in writing at least thirty days prior to the Closing.

8.7 No Litigation. No temporary restraining order, preliminary injunction or permanent injunction or other order preventing the consummation of the Merger shall have been issued by any governmental entity and remain in effect. No litigation seeking the issuance of such an order or injunction, or seeking relief against WAIS, AOL or Sub if the Merger is consummated, shall be pending, and no other litigation shall have been filed and pending against WAIS which, in the good faith judgment of AOL, after consultation with WAIS, has a reasonable probability of resulting in such order, injunction or relief and such relief would have a Material Adverse Effect. In the event any such order or injunction shall have been issued, each party agrees to use its best efforts to have any such injunction lifted.

8.8 Requisite Approvals. The principal terms of this Agreement and the Agreement of Merger shall have been approved and adopted by (i) holders of 100% of the WAIS Stock outstanding as of March 17, 1995, (ii) holders of 99% of the WAIS Stock outstanding on the record date for obtaining shareholder approval of this Agreement and the Agreement of Merger, and (iii) as required by applicable law and WAIS's Articles of Incorporation and Bylaws. WAIS will comply with Chapter 13 of the California General Corporation Law with respect to any Dissenting Shares.

8.9 Pooling Opinion. AOL shall have received from Ernst & Young LLP, an opinion, in form and substance satisfactory to AOL, that the Merger will be treated as a "pooling of interests" for accounting purposes.

8.10 Escrow. AOL shall have received the Escrow Agreement executed by the parties thereto.

8.11 Continuity of Interest Representations. AOL shall have received the form of Continuity of Interest Certificate attached hereto as Exhibit 8.11, signed by WAIS Shareholders who will receive a majority of the AOL Common Stock in the Merger.

8.12 Noncompetition Agreements. AOL shall have received noncompetition and nonsolicitation agreements in the forms attached as Exhibit 8.12 (the "Noncompetition Agreements"), executed by Brewster Kahle, ~~John Duhring~~, Bruce Gilliat, and Harry Morris ~~and Nicholas M. Scharf~~, which will become effective only upon the Closing of the Merger.

8.13 Registration Rights Agreement. AOL shall have received from each holder of WAIS Stock receiving AOL Common Stock in the Merger hereunder an executed copy of the Registration Rights Agreement.

8.14 Investment Representation Agreement. AOL shall have received from each holder of WAIS Stock receiving AOL Common Stock in the Merger hereunder an executed Investment Representation Agreement substantially in the form of Exhibit 8.14 hereto.

~~8.15 Consent to Cancellation of WAIS Options. AOL shall have received from each recipient of AOL Options and Additional AOL Options hereunder an executed written consent to the cancellation of all outstanding options to purchase WAIS Stock held by such recipient.~~

## 9. TERMINATION OF AGREEMENT

### 9.1 Prior to Closing.

9.1.1 This Agreement may be terminated at any time prior to the Closing by the mutual written consent of each of the parties hereto.

9.1.2 Unless otherwise specifically provided herein or agreed by the parties hereto, this Agreement will be terminated if all conditions to the Closing have not

been or cannot reasonably be satisfied or waived on or before May \_\_, 1995 unless the Closing has been extended by the parties.

9.2 At the Closing. At the Closing, this Agreement may be terminated and abandoned:

9.2.1 By AOL if any of the conditions precedent to AOL's and Sub's obligations set forth in Section 8 above have not been fulfilled or waived at and as of the Closing; or

9.2.2 By WAIS if any of the conditions precedent to WAIS's obligations set forth in Section 7 above have not been fulfilled or waived at and as of the Closing. Any termination of this Agreement under this Section 9.2 will (i) be effective upon the delivery of notice of the terminating party to the other party hereto, except as provided below and (ii) will not result in liability for either party to the other.

9.3 No-Shop Provision; Break Up Fee. WAIS agrees that, from the date hereof until the Closing Date or the earlier mutual abandonment of the transactions contemplated by this Agreement (the "No-Shop Period"), WAIS and Mr. Brewster Kahle will not, and will not authorize any officer or director of WAIS or any other person on its behalf to, solicit, encourage, negotiate or accept any offer from any party concerning: (i) the possible disposition of all or any substantial portion of WAIS's business, assets or capital stock by merger, sale or any other means or any other transaction that would involve a change in control of WAIS; or (ii) the sale of any equity or debt securities of WAIS. WAIS will promptly notify AOL in writing of any such inquiries or proposals. If WAIS merges with, or WAIS or its assets are acquired by, a company other than AOL or a wholly-owned subsidiary of AOL during a period of one year after ~~March 17, 1995~~ (the "No-Shop Period"), the date hereof and if discussions with such company concerning such acquisition occur during the No-Shop Period, WAIS (or the acquiring company) will immediately pay AOL the sum of \$3,000,000 and AOL will make no other claims against WAIS or its shareholders regarding the transactions contemplated by this Agreement. WAIS shall have no obligations under this Section if AOL decides at its sole discretion not to proceed with the transactions contemplated by this Agreement or causes such transactions not to occur (other than as a result of WAIS's breach of this Agreement or intentional failure to cause a condition of Closing to occur).

9.4 Certain Continuing Obligations. Following any termination of this Agreement pursuant to this Section 9, the parties hereto will continue to perform their respective obligations under Section 9.3 and Section 11 but will not be required to continue to perform their other covenants under this Agreement.

## **10. SURVIVAL OF REPRESENTATIONS, INDEMNIFICATION AND REMEDIES**

10.1 Survival of Representations. All representations, warranties and covenants of WAIS contained in this Agreement will remain operative and in full force and effect,

regardless of any investigation made by or on behalf of the parties to this Agreement, until the earlier of the termination of this Agreement in accordance with its terms or the Final Release Date (as defined in the Escrow Agreement), whereupon such representations, warranties and covenants will expire; provided that the representations and warranties contained in Sections 2.8, 2.12, 2.14, 2.22, 2.23, and 2.24, to the extent the same apply to conditions existing on or before the Closing Date (the "Specific Representations"), shall remain operative and in full force and effect until the first anniversary of the Closing Date. AOL's and Sub's representations, warranties and covenants contained in this Agreement shall terminate as of the earlier of the termination of this Agreement in accordance with its terms or the ~~Closing.~~ ~~[SUBJECT TO ACCOUNTANT REVIEW IN CONNECTION WITH POOLING.]~~ Final Release Date.

10.2 Indemnity and Escrow Agreement. Subject to the limitations set forth in this Section 10, the WAIS Shareholders will indemnify and hold harmless AOL, Sub and its respective officers, directors, agents and employees, and each person, if any, who controls or may control AOL or Sub within the meaning of the Securities Act (hereinafter referred to individually as an "Indemnified Person" and collectively as "Indemnified Persons") from and against any and all losses, costs, damages, liabilities and expenses arising from claims, demands, actions, causes of actions, including, without limitation, reasonable legal fees, net of any recoveries under applicable insurance policies, or indemnities from third parties or tax benefits to AOL resulting from such damage and known to AOL at the time of making a claim under the Escrow (hereinafter referred to as "Damages") arising out of (i) any misrepresentation or breach of or default in connection with any of the representations, warranties and covenants given or made by WAIS in this Agreement, the WAIS Schedules or any exhibit attached hereto or (ii) any claim, demand, action, or cause of action brought within ~~six (6)~~ two (2) years after the Closing Date relating to any matter disclosed or required to be disclosed on Section 2.22 to the WAIS Schedules as required by Section 2.22.2(f) hereof (the "Section 2.22.2(f) Matters"); provided that the event underlying such claim, demand, action or cause of action occurred prior to the Closing Date. Notwithstanding anything in this Agreement to the contrary, the Escrow Shares shall be AOL's and Sub's sole recourse for breaches of all representations, warranties, agreements and covenants made by WAIS and/or Mr. Kahle pursuant to this Agreement, other than the Specific Representations and the Section 2.22.2(f) Matters. Notwithstanding the foregoing, (x) upon the Final Release Date, Mr. Kahle's obligation to indemnify AOL for any claim relating to the Section 2.22.2(f) Matters not based on wilful or knowing action or inaction shall be limited to an amount not to exceed one hundred percent (100%) of Three Hundred Twenty-eight Thousand Dollars (\$328,000), (y) Mr. Kahle's obligation to indemnify AOL with respect to any claim relating to Section 2.22.2(f) Matters shall be limited only to such claims arising under those Government Contracts entered into by WAIS prior to the Closing Date, and (z) Mr. Kahle shall have no liability or obligation to indemnify AOL for Section 2.22.2(f) Matter claims to the extent such claims result from AOL's failure to use commercially reasonable efforts to mitigate liability to WAIS resulting from WAIS's failure before the Closing to properly legend WAIS's software upon delivery to the U.S. Government. The indemnification provided for in

this Section 10.2 shall not apply unless and until the aggregate Damages for which one or more Indemnified Persons seeks indemnification under this Section, exclusive of legal fees, exceeds \$25,000 (the "Basket"), in which event the indemnification shall include all Damages (including the Basket). AOL will use commercially reasonable efforts to obtain recoveries under all applicable insurance policies for all Damages.~~[SUBJECT TO ACCOUNTANT REVIEW IN CONNECTION WITH POOLING.]~~

## 11. MISCELLANEOUS

11.1 Governing Law. The internal laws of the State of California (irrespective of its choice of law principles) will govern the validity of this Agreement, the construction of its terms, and the interpretation and enforcement of the rights and duties of the parties hereto. Any litigation or other dispute resolution between the parties relating to this Agreement will take place in any court of competent jurisdiction.

11.2 Assignment; Binding Upon Successors and Assigns. Neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party hereto. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11.3 Severability. If any provision of this Agreement, or the application thereof, is for any reason held to any extent to be invalid or unenforceable, the remainder of this Agreement and application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto.

11.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original as regards any party whose signature appears thereon and all of which together will constitute one and the same instrument. This Agreement will become binding when one or more counterparts hereof, individually or taken together, will bear the signatures of both parties reflected hereon as signatories. Facsimile copies of such counterparts are acceptable.

11.5 Other Remedies. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby or by law on such party, and the exercise of any one remedy will not preclude the exercise of any other.

11.6 Amendment and Waivers. Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed WAIS and AOL (which shall also be deemed binding on Sub). The waiver by a party of any breach hereof or default in the performance hereof will not be deemed to constitute a waiver of any other default or any succeeding breach or default. The Agreement may be amended by the parties hereto at any time before or after approval of the WAIS Shareholders, but, after such approval, no amendment will be made which by applicable law requires the further approval of the WAIS Shareholders without obtaining such further approval.



11.7 No Waiver. The failure of any party to enforce any of the provisions hereof will not be construed to be a waiver of the right of such party thereafter to enforce such provisions.

11.8 Expenses. Each party will bear its respective expenses and fees of its own accountants, attorneys, investment bankers and other professionals incurred with respect to this Agreement and the transactions contemplated hereby. If the Merger is consummated, AOL will pay promptly after Closing up to \$75,000 of the reasonable legal and accounting fees and disbursements actually incurred by WAIS in connection with the transactions contemplated hereby. The shareholders of WAIS shall pay any such fees in excess of the above amount, on a pro-rata basis. If WAIS or AOL receives any invoices for amounts in excess of said amounts, it may, with AOL's written approval, pay such fees; provided, however, that such payment shall, if not promptly reimbursed by the WAIS shareholders at AOL's request, constitute "Damages" recoverable under the Escrow Agreement and such Damages shall not be subject to the Basket.

11.9 Attorneys Fees. Should suit be brought to enforce or interpret any part of this Agreement, the prevailing party will be entitled to recover, as an element of the costs of suit, reasonable attorneys fees to be fixed by the court (including without limitation, costs, expenses and fees on any appeal). The prevailing party will be entitled to recover its costs of suit.

11.10 Notices. Any notice or other communication required or permitted to be given under this Agreement will be in writing, will be delivered personally or by facsimile transmission or by mail or express delivery, postage prepaid, and will be deemed given upon actual delivery or, if mailed by registered or certified mail, return receipt requested, three days after deposit in the mails, addressed as follows:

(i) If to AOL or Sub:

America Online, Inc.  
8619 Westwood Center Drive  
Vienna, VA 22182  
Attention: Ellen M. Kirsh, Esq., General Counsel  
facsimile (703) 448-9164

with a copy to:

Mark C. Stevens, Esq.  
Fenwick & West  
Two Palo Alto Square, Suite 800  
Palo Alto, California 94306  
facsimile (415) 857-0361

(ii) If to WAIS:

Wide Area Information Servers, Inc.  
690 Fifth Street  
San Francisco, California 94107  
Attention: President  
facsimile (415) 356-5444

with a copy to:

Allen L. Morgan, Esq.  
Wilson, Sonsini, Goodrich & Rosati  
Professional Corporation  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
facsimile (415) 493-6811

or to such other address as a party may have furnished to the other parties by written notice given in accordance with this Section 11.10.

11.11 Construction of Agreement. This Agreement has been negotiated by the respective parties hereto and their attorneys and the language hereof will not be construed for or against either party. A reference to a section or an exhibit will mean a section in, or exhibit to, this Agreement unless otherwise explicitly set forth. The titles and headings herein are for reference purposes only and will not in any manner limit the construction of this Agreement which will be considered as a whole.

11.12 No Joint Venture. Nothing contained in this Agreement will be deemed or construed as creating a joint venture or partnership between any of the parties hereto. No

party is by virtue of this Agreement authorized as an agent, employee or legal representative of any other party. No party will have the power to control the activities and operations of any other and their status is, and at all times, will continue to be, that of independent contractors with respect to each other. No party will have any power or authority to bind or commit any other. No party will hold itself out as having any authority or relationship in contravention of this Section.

11.13 Further Assurances. Each party agrees to cooperate fully with the other parties and to execute such further instruments, documents and agreements and to give such further written assurances as may be reasonably requested by any other party to evidence and reflect the transactions described herein and contemplated hereby and to carry into effect the intents and purposes of this Agreement.

11.14 Absence of Third Party Beneficiary Rights. No provisions of this Agreement are intended, nor will be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind in any client, customer, affiliate, shareholder, partner or employee of any party hereto or any other person or entity unless specifically provided otherwise herein, and, except as so provided, all provisions hereof will be personal solely between the parties to this Agreement.

11.15 No Public Announcement. ~~WAIS~~ Neither party will make ~~no~~ any public disclosure of the negotiation of the Merger without the prior written consent of ~~AOL~~ the other party. AOL and WAIS will issue a joint press release approved by both parties announcing the Merger upon execution of this Agreement. In all events, AOL may issue such press releases, and make such other disclosures regarding the Merger, as it determines, in the opinion of its counsel, are required under applicable law or NASD rules. Until termination of this Agreement in accordance with Section 9.1 or 9.2 hereof, WAIS will take all reasonable precautions to prevent any trading in the securities of AOL by officers, directors, employees and agents of WAIS (a) having knowledge of any material information regarding AOL provided hereunder until the information in question has been publicly disclosed or (b) to the extent that such trading would adversely affect the treatment of the Merger as a "pooling of interests" for accounting purposes.

11.16 Entire Agreement. This Agreement, the WAIS Schedules, the AOL Schedule of Exceptions and the exhibits hereto, and the Nondisclosure Agreement, dated March 9, 1995 between the parties, constitute the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and supersede all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties with respect hereto, including the Letter of Intent dated March 17, 1995. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**AMERICA ONLINE, INC.**  
a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**WIDE AREA INFORMATION  
SERVERS, INC.**  
a California corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AOL ACQUISITION CORP.**  
a California corporation  
and 10

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

The undersigned has signed this Agreement  
solely with respect to Sections 2, 9.3, 9.4

hereof:

\_\_\_\_\_  
Brewster Kahle, individually

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF REORGANIZATION]

## **WAIS SCHEDULES**

Schedule 2.0

WAIS Schedule of Exceptions

## **AOL SCHEDULES**

Schedule 3.0 AOL Schedule of Exceptions

## **EXHIBITS TO PLAN**

Exhibit A Agreement of Merger (See Tab \_\_\_\_)  
Exhibit 1.1.1 Current WAIS Options  
Exhibit 1.3 Escrow Agreement (See Tab \_\_\_\_)  
Exhibit 1.7A-B Officer Certificates on Tax Matters (See Tabs \_\_\_\_ and \_\_\_\_)

~~Exhibit 4.12 Assignment of Copyright & Other Intellectual Property Rights~~

Exhibit 4.14 WAIS Affiliates Agreement (See Tab \_\_\_\_)  
Exhibit 5.1.4 AOL Affiliates Agreement (See Tab \_\_\_\_)  
Exhibit 6.4 Additional AOL Options

~~Exhibit 7.7 Opinion of AOL's Counsel (See Tab \_\_\_\_)~~

Exhibit 7.9 Registration Rights Agreement (See Tab \_\_\_\_)  
Exhibit 8.5 Opinion of Counsel for WAIS (See Tab \_\_\_\_)  
Exhibit 8.11 Continuity of Interest Certificate (See Tab \_\_\_\_)  
Exhibit 8.12 Noncompetition Agreements (See Tabs \_\_\_\_)  
Exhibit 8.14 Investment Representation Agreement (See Tab \_\_\_\_)

**EXHIBIT 1.1.1**

**CURRENT WAIS OPTIONS**

"Current WAIS Options" shall mean options to purchase 1,908,000 shares of WAIS Common Stock.

## **EXHIBIT 6.4**

### **ADDITIONAL AOL OPTIONS**

Upon the Closing of the Merger, the following options to purchase AOL Common Stock will be granted under the America Online, Inc. 1992 Employee, Director and Consultant Stock Option Plan (the shares issuable under which will be registered on Form S-8 to be filed within 30 days after the Closing Date), in each case with an exercise price equal to the closing price of AOL Common Stock on the trading day immediately prior to the Closing Date:

(i) Brewster Kahle Option. Mr. Kahle will receive an option to purchase shares with an aggregate exercise price of \$3,500,000. Such option will vest as to 1/2 of the shares on the second anniversary of the Closing Date, with an additional 1/4 of the shares vesting on the third and fourth anniversaries of the Closing Date.

(ii) Options for Current Employees. Options to purchase shares with an aggregate exercise price of \$2,500,000 will be granted to other employees of WAIS who are employed by WAIS as of March 17, 1995 and who remain employed by WAIS at the Closing Date. Such options will have standard, ratable 4 year vesting, with the first vesting date at the first anniversary of the Closing Date. Such options will be granted to the following persons in the following amounts (the table below shall be updated on the Closing Date by WAIS subject to the reasonable approval of AOL):

<u>Name</u>	<u>Aggregate Exercise Price</u>	<u>No. of Shares</u>
<b>[TO COME FROM AOL/WAIS]</b>		
TOTAL	\$2,500,000	

(iii) Options for New Employees. Options to purchase shares with an aggregate exercise price of up to \$2,000,000 will be granted to other employees of WAIS who are hired by WAIS after March 17, 1995 and who are employed by WAIS at the Closing Date. Such options will have standard, ratable 4 year vesting. The allocation of these options will be specified by Mr. Kahle in writing from time to time prior to Closing and will be subject to the reasonable approval of AOL.